IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

OP.No. 37059 of 2002(J)

PETITIONER:

SHRI. R. MOHANKUMAR, RETD. CHIEF PERSONNEL OFFICER, KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM, RESIDING AT T.C. 75/2255, CHANDNI, CHURCH ROAD, PALLIMUKKU, PETTAH, THIRUVANANTHAPURAM.

BY ADV. SRI.S.RAMESH BABU.

RESPONDENT:

KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI. C.K. KARUNAKARAN, S.C, KSEB.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 62659/2002 IN O.P. NO. 37059/2002

DISMISSED

05/07/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE B.O.NO. 648/96/SC/LTS/OPR/95 ORDER DTD. 15/03/1996.

EXT.P.2: COPY OF THE B.O. NO. PS. IV/3188/GRADE PROMOTION/2001 DTD. 20/09/2001.

EXT.P.3: COPY OF THE B.O. NO. PS.IV/3188/GR. PROMOTION/2001 DTD. 15/12/2001.

EXT.P.4: COPY OF THE REPLY DTD. 21/12/2001.

EXT.P.5: COPY OF THE B.O. (FB). NO. 1438/02 (PS.IV/3188/2001) DTD. 21/10/2002.

EXT.P.6: COPY OF THE RELEVANT EXTRACTS FROM THE PAY REVISION ORDER DTD. 23/02/2001.

EXT.P.7: COPY OF THE BOARD ORDER DTD. 09/01/2001.

EXT.P.8: COPY OF THE G.O. (P). 951/86/ (118) FIN DTD. 26/12/1986.

EXT.P.9: COPY OF THE LETTER DTD. 13/09/2002.

RESPONDENT'S EXHIBITS:

EXT.R1.A: COPY OF THE B.O. NO. III-6276/89 DTD. 22/06/89 ISSUED BY K.S.E. BOARD.

EXT.R1.B: COPY OF THE B.O. NO. 51/95/ESTT.III/6813/94 DTD. 10/01/1995 ISSUED BY K.S.E. BOARD.

EXT.R1.C: COPY OF THE EXTRACT FROM MEMORANDUM OF SETTLEMENT SIGNED ON 19/04/1990, `ARTICLE VIII - GRADE PROMOTIONS.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.37059 of 2002-J

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Dated this the 5th day of July, 2007.

JUDGMENT

The petitioner entered the service of the Kerala State Electricity Board as a Regional Personnel Officer on 1-9-1976. On 19-3-1987, he was given the first higher grade. On 22-6-1989, he was regularly promoted as a Personnel Officer thereby continuing to draw emoluments on the scale to which he got higher grade promotion on 19-3-1987. On 10-1-1995, he was given the second higher grade and on 11-1-1995, he was promoted as Chief Personnel Officer in the same scale to which he was given the second higher grade on 10-1-1995. He retired on 30-9-2001, after completing 25 years of service on 1-9-2001. Following the terms of Ext.P1, the petitioner was granted the third higher grade on 1-9-2001. Thereafter, certain audit objections

followed, resulting in Ext.P3 by which the petitioner was asked to show cause against cancellation of the benefit of third higher grade given to him. The reason stated in Ext.P3 is that the benefit of clause viii in Article VIII of the Long Term Settlement dated 19-4-1990 is applicable only in cases of employees for whom no promotion channel is fixed and not in favour of employees whose channel of promotion is fixed but the channel ended at a specific level. Petitioner submitted Ext.P4 objections. That was overruled and the impugned Ext.P5 was issued affirming the decision to recall the grant of higher grade and effect recovery of the over-drawals.

2. By Clause III(2) of Ext.P1, which relates to employees other than workmen, it was ordered that the "present practice" of granting time-bound grade promotion for completed service of 10/20 years in the case of Officers will be revised as 10, 18 and 25 years as in the case of

workmen. The notional effect of that decision was to be from 1-7-1988 and monetary benefit to flow from 1-7-1993. This shows that while Ext.P1 was issued on 15-3-1996, there were already orders governing grant of time-bound grade promotions for Officers. The reference to the grade promotion being given to workmen was only to state that in terms of Ext.P1, the entitlement of the Officers would also be for three higher grades. That is not a mode of incorporation of all the terms of Clause viii in Article VIII of Ext.R1(c) Long Term Settlement between the workmen and the Board because, that clause was dealing with cases where no promotion channels were then fixed and it was, therefore, that it was mentioned in the immediate succeeding clause, Clause ix of Article VIII [Ext.R1(c)] that all other existing provisions for granting grade promotions, other than those modified in terms of Ext.R1(c) will continue to apply unaltered. The audit objections as well as the impugned decisions of the Board applying Clause viii in Article VIII

[Ext.R1(c)] Long Term Settlement, as if they matatis mutandis apply to Officers, are therefore without any basis. Even if two views are possible, the Board having once taken a view and given the benefit, such benefit should not have been taken away by Exts.P3 and P5 orders because the grant of the higher grade was permissible, at least, following one view of construing the relevant provisions.

3. In the aforesaid circumstances, the impugned Exts.P3 and P5 and the audit objections on the basis of which those orders are issued are quashed. All consequential benefits on the basis of this judgment shall follow.

The writ petition is allowed as above. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.37059 of 2002-J

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JUDGMENT

Dated: 5th July, 2007.